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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 521 (CM)

5 JAMES CAHILL, *et al*,

6
7 Defendants.

8 Teleconference

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9
10 New York, N.Y.
November 9, 2021
11 3:00 p.m.

12 Before:

13 HON. COLLEEN MCMAHON,

14 Chief Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the
Southern District of New York

18 BY: JASON M. SWERGOLD

JUN XIANG

19 DANIELLE SASSOON

LAURA DE OLIVEIRA

20 Assistant United States Attorneys

21 SANFORD N. TALKIN

22 Attorney for Defendant James Cahill

23 EDWARD V. SAPONE

24 Attorney for Defendant Christopher Kraft

25 ALBERT EBANKS

Attorney for Defendant Patrick Hill

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(Appearances Continued)

JAMES R. FROCCARO

Attorney for Defendant Matthew Norton

BRIAN E. MAAS

Attorneys for Defendant William Brian Wangerman

CAMILLE M. ABATE

Attorney for Defendant Kevin McCarron

HENRY E. MAZUREK

ILANA HARAMATI

Attorney for Defendant Jeremy Sheeran

STEVE ZISSOU

Attorney for Defendant Andrew McKeon

ROLAND G. RIOPELLE

Attorney for Defendant Robert Egan

GLENN H. MORAK

Attorney for Defendant Scott Roche

JOHN F. KALEY

Attorney for Defendant Arthur Gipson

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1 (Case called)

2 DEPUTY CLERK: Counsel, first I'll call the
3 defendant's name. Counsel, state your client's name and say if
4 your client is here.

5 James Cahill.

6 MR. TALKIN: Good afternoon, your Honor.

7 Sanford Talkin for Mr. Cahill. Mr. Cahill is present
8 with me in my office.

9 DEPUTY CLERK: Speak up, folks.

10 Kraft

11 MR. SAPONE: Good afternoon, your Honor.

12 Edward Sapone for Mr. Kraft, and Mr. Kraft is on
13 video.

14 DEPUTY CLERK: Hill.

15 MR. EBANKS: Good afternoon, your Honor.

16 Albert Ebanks on behalf of Patrick Hill. My client is
17 on via phone call.

18 DEPUTY CLERK: Norton.

19 MR. FROCCARO: Good afternoon, your Honor.

20 James Froccaro for Mr. Norton, who is seated beside
21 me, your Honor.

22 DEPUTY CLERK: Wangerman.

23 MR. MAAS: Good afternoon, your Honor.

24 Brian Maas for Mr. Wangerman. Mr. Wangerman is seated
25 next to me.

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1 DEPUTY CLERK: McCarron.

2 MS. ABATE: Good afternoon, your Honor.

3 Camille Abate for Kevin McCarron who is on via
4 telephone.

5 DEPUTY CLERK: Sheeran.

6 MR. MAZUREK: Good afternoon, everyone.

7 Henry Mazurek, Ilana Haramati on behalf of
8 Mr. Sheeran, who is sitting between us on video.

9 DEPUTY CLERK: McKeon.

10 MR. ZISSOU: Steve Zissou for Mr. McKeon. He is
11 present with me in my office.

12 Good afternoon, your Honor.

13 DEPUTY CLERK: Eagan.

14 MR. RIOPELLE: Good afternoon, your Honor.

15 Roland Riopelle for Robert Egan who is here at my
16 office with me.

17 DEPUTY CLERK: Roche.

18 MR. MORAK: Good afternoon, your Honor.

19 This is Glenn Morak. Mr. Roche appears on Teams
20 presently.

21 DEPUTY CLERK: Gipson.

22 MR. KALEY: Good afternoon, your Honor.

23 John Kaley for Mr. Gipson who is appearing by
24 telephone.

25 DEPUTY CLERK: Government.

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1 MR. SWERGOLD: Good afternoon, your Honor.

2 For the government, Jason Swergold, Jun Xiang,
3 Danielle Sassoon and Laura De Oliveira.

4 DEPUTY CLERK: Again, I'm reminding everybody to
5 please speak up.

6 THE COURT: I have a consent to proceed in this
7 manner, which is by videoconference or teleconference, from
8 Patrick Hill. I have one from Mr. Eagan. I have one from
9 Mr. McCarron, one from Mr. Cahill, one from Mr. Kraft, one from
10 Mr. Gipson, one from Mr. Norton. That's seven. That means I
11 don't have them from some people.

12 MR. MAZUREK: This is Henry Mazurek on behalf of
13 Mr. Sheeran. We needed to get my client's signature, but we
14 consent.

15 THE COURT: Mr. Mazurek, you're breaking up. You want
16 to say that again.

17 MR. MAZUREK: Yes, your Honor. Henry Mazurek on behalf
18 of Mr. Sheeran. One should be delivered shortly by email. We
19 just had to get his signature when he arrived. My assistant
20 should be emailing that shortly. We agree orally to proceed by
21 video.

22 MR. MAAS: Your Honor, this is Brian Maas for
23 Mr. Wangerman. I'll have Mr. Wangerman sign the form and get
24 it back to you, but we certainly consent.

25 MR. MORAK: Your Honor, this Glenn Morak for

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1 Mr. Roche. I emailed the form at 8:30 this morning to
2 Mr. O'Neil.

3 MR. SAPONE: Your Honor, this is Ed Sapon on behalf
4 of Mr. Kraft. I got his signature and e-mailed it yesterday.

5 THE COURT: We have Mr. Kraft. All right. This is
6 the last time we're doing this, folks. I just want people to
7 know. We're going back to normal. We're going back to people
8 appearing in court. I have no idea how much longer this CARES
9 Act stuff is going to be continued, but I'm done. I'm done.
10 I've been here all day. You all can come in.

11 From the government, Mr. Swergold, what are we doing?

12 MR. SWERGOLD: Thank you, your Honor.

13 To give the Court an update in terms of discovery and
14 then recent conversations and agreements that we've reached
15 with defense counsel regarding discovery issues: Since the
16 last conference, the government made additional productions
17 that included line sheets for the three wiretaps that we
18 produced, additional responsiveness review sets for electronic
19 devices.

20 We had previously cross-produced the full devices to
21 everybody, except for Mr. Sheeran because he had not signed
22 that cross-production agreement, but now we also continue to
23 follow up with productions of the responsive sets. And then
24 the largest item is obviously as we previewed in the June 17th
25 conference, the consensual wiretap that was approximately two

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1 years on the confidential source's phone. All of that's been
2 produced. We think we've produced all the categories of Rule
3 16 information of which we are aware. We obviously continue to
4 go through our files, either in response to the defense
5 requests or just on our own to make sure that there's no
6 one-off documents that we haven't produced.

7 There were some issues with some of our productions
8 because of the size of the production or a technical issue
9 where defense counsel helpfully brought to our attention that a
10 piece of the production appeared to be missing. We continue to
11 fix those issues. So while we may have still have additional
12 hard drives to burn, it's because we're fixing something that
13 we previously produced to the defense.

14 We had a meet and confer with the defense, with the
15 majority of defense counsel last week. The government
16 appreciates and recognizes that there is a very high volume of
17 material in this case, that there are wiretaps that span in
18 some -- with respect to some of the phone over a year, which is
19 a long time to have a wiretap to review.

20 And we also recognize that the wiretap program is not
21 something that's necessarily very user friendly, and it's not
22 one that defense counsel in this district I think are
23 accustomed to using, and we've committed from the beginning to
24 provide as much technical support to the defense as needed. We
25 had multiple conversations with defense counsel to help them

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1 work through those issues. On the recent meet and confer, one
2 thing that defense counsel ask was whether or not the
3 government would be willing to produce to them, basically very
4 early case in chief material to help them sort of consider the
5 case and go through the voluminous wiretaps reports.

6 Obviously, that's a premature request because we don't
7 know what our case in chief is going to look like. We don't
8 even know who is going to go to trial, but what we did commit
9 to do is on a rolling basis, we're going to produce to them or
10 identify for them what you could call hot docs or hot calls
11 both off the wiretap and in other categories of evidence to
12 allow the defense to have a better opportunity to assess the
13 strength of the evidence against their clients, hopefully to
14 facilitate some discussions to resolve the case with respect to
15 some of the defendant. So we have agreed to do that, and we'll
16 start producing that stuff to the defendants on a rolling
17 basis.

18 They also asked us about certain information related
19 to some subpoenas that we had issued to third-parties in the
20 hopes of avoiding unnecessary Rule 17 litigation, and we
21 thought that it was prudent to provide them with the
22 information that they asked for, and so hopefully we will not
23 be burdening the Court with any Rule 17 litigation.

24 So from the government's perspective, your Honor, I
25 think it makes sense to set a motion schedule based on the

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1 productions that have happened to date. In speaking with
2 defense counsel -- look, I don't think the government is saying
3 today that the Court needs to set a trial schedule if the
4 defense is saying that they need more time to review.

5 THE COURT: I can't set a trial schedule,
6 Mr. Swergold. We're not allowed to do that yet.

7 MR. SWERGOLD: Right. What we would ask for is a
8 motion schedule, and the hope really is, I think, that by
9 identifying these sets -- again, for the lack of a better term,
10 hot documents, hot calls, recordings, to the defense that we
11 can facilitate plea discussions in the near future.

12 THE COURT: It's remarkable how far ahead of your
13 mouth your voice is, Mr. Swergold. That is quite a speech.
14 Okay. What about from defense counsel?

15 MR. KALEY: This is John Kaley for Mr. Gibson. My
16 suggestion would be to not set a motion schedule, but to give
17 us additional time to review what really was voluminous
18 material that we received at the end of September.

19 At the end of September, the government produced the
20 actual audio files for the Suffolk County wiretap that had been
21 up for two years. We have calculated that there are
22 approximately 6,357 audio files. They are not searchable. We
23 don't know who's on what audio file, and the only way to do it
24 is to actually go through them one by one as far as I can tell.

25 So to the extent the government is going to preview

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1 some of what they consider the hot calls, that would be
2 helpful. And rather than spending time on motions that may or
3 may not be necessary, I would prefer to spend time on these
4 audio calls.

5 And in that regard, your Honor, I had asked the
6 government to consider modifying the protective order, which
7 precludes the defendants from having what has been designated
8 as sensitive material in their possession. But quite honestly,
9 there's no way that I can have Mr. Gipson sitting in my office
10 with someone watching him while he attempts to listen to as
11 many of these audio files as possible.

12 That's kind of an ancillary point to my suggestion
13 that we adjourn and give us more time to listen to these calls
14 and to review this material. Just parenthetically, the
15 government has been helpful quite recently also with regard to
16 the previous wires that were produced in February. Those
17 contain probably 7- or 800 audio files.

18 We received the line sheets for those wires in
19 September, and so it has been helpful to have line sheets.
20 Otherwise, we were in the same predicament of just listening to
21 a phone call and seeing who's there, but we don't have line
22 sheets for the over 6,000 audio files that were just produced
23 in September. And I appreciate that the government will make
24 some effort to give us the hot stuff.

25 I'm hoping that while they're reviewing the hot stuff

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1 and they come across some *Brady* material, they'll also turn
2 that over, but that's a herculean task. It's over 6,000 audio
3 files. Some of them may be short, just an answering machine, a
4 pick up, call me, that type of thing, but it would appear that
5 many of them are conversations.

6 THE COURT: I'm confused as to why we're having all
7 these issues with the Suffolk wiretap. Mr. Swergold, you said
8 that the program was not one with which counsel in this
9 district are familiar. I don't understand that.

10 MR. SWERGOLD: Your Honor, if I may, and then also I
11 just want to address a point that Mr. Kaley made to make sure
12 the record is clear. The wiretap program is a program that the
13 Suffolk County District Attorney's office uses. It creates
14 what you could call a packet of discovery material, so it will
15 have all of the information for each call, and it will have a
16 link for the audio, and you should be able to navigate through
17 it. But what we found was, there were difficulties depending
18 on what programs different people were using to listen to it.

19 We did make recommendation to what programs people
20 should use on their computers. That worked for some. It
21 didn't work for others. It's not the typical system that we
22 see, for example, like when the DEA -- when we produce a
23 wiretap from the DEA. It's just not the same program that
24 Suffolk is using. It's also not a program that we've used a
25 lot at the U.S. Attorney's office. I have used it in other

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1 cases when we inherited a case from the state. We're trying
2 very hard to get it to work for everybody, and that's one of
3 the reasons why we've agreed to produce this early disclosure
4 of what we consider to be relevant calls.

5 I do want to point out -- so there are two parts to
6 the wiretap. There's the wiretap on three targets that were --
7 you have a wiretap on three targets that was produced in
8 February, and then there's the wire on the confidential source
9 that was produced in September.

10 With respect to the September one, most of that is not
11 really Rule 16. It's very, very, very early 3500/*Giglio*
12 disclosure, and there are no line sheets for that, because the
13 agents were not making line sheets. It was a consensual
14 wiretap. The line sheets that we did produce go to the
15 calls -- the three wires they had in February. And just so the
16 Court knows, that's on Mr. Cahill, Mr. Gipson and Mr. Hill.

17 I was going to say with respect to Mr. Kaley's recent
18 request regarding the protective order, I advised him that was
19 something the government would discuss internally and get back
20 to him. There is a concern obviously with relaxing protective
21 order restrictions on a wiretap that belonged to a confidential
22 informant, but we are going to consider it and figure out if
23 there's something we can do to help the defense with respect to
24 the review of that wiretap.

25 MR. RIOPELLE: Roland Riopelle for Robert Eagan. With

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1 respect to the 6, 000 plus calls for which there are now no
2 line sheets --

3 THE COURT: And never will be any line sheets.

4 MR. RIOPELLE: Is the government committing to go
5 through those and include those in what it calls the hot
6 documents that is apparently going to produce to us soon, or is
7 that just going to be out there now for everybody to try to get
8 through at some point in the future?

9 I want to know if those are going to be included in
10 what's going to be produced to us as the hot documents for our
11 respective clients?

12 MR. SWERGOLD: Yes, your Honor. We will include
13 relevant calls off of that wiretap and include it in the hot
14 documents.

15 And I would just note -- and I think all of the
16 defense lawyers are aware of this -- that even though the
17 program doesn't have the typical search capability that you
18 would see in some of the other wiretap programs, the defendants
19 can search -- there is a master PDF for each wiretap. The
20 defendants can search, for example, for their client's phone
21 numbers and pretty quickly identify calls that their clients
22 were on.

23 I recognize that it then requires an additional one or
24 two or three steps to listen to the call because of the
25 functionality of the program and some of the limitations people

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1 have been having, but that is, again, one of the things we've
2 tried to help walk them through so that it's easier for them to
3 review it rather than clicking on every single call.

4 THE COURT: This is all very kind, Mr. Swergold, but
5 my question is: You produced this in September. Presumably
6 you have some occasion to listen to and identify what the
7 critical parts of it were before you produced it.

8 It's now November, when are the critical calls from
9 your perspective going to be identified? Next week? Next
10 month?

11 MR. SWERGOLD: We can start rolling out all the
12 critical calls -- what we consider to be the critical calls off
13 the wires, and the defense has agreed -- without limitation to
14 identifying additional stuff as we move on. We can do it within
15 30 days, your Honor. This is a request that we received from
16 the defense last week for the first time, and we are committed
17 to working on it.

18 THE COURT: Mr. Swergold, please. You know what
19 critical calls are. If I tell you, you have to give it to them
20 tomorrow, you can do that. I know you know that.

21 MR. SWERGOLD: And we would respectfully request, your
22 Honor, a little more time than producing it by the end of this
23 week to get a large set as possible to the defense as possible.

24 THE COURT: Well, okay, I tell you what, you get it to
25 them by the end of this month, which is the 30th of November.

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1 MR. SWERGOLD: Understood.

2 THE COURT: I'm going to set a long motion schedule
3 that will accommodate everybody's interests, defense in
4 reviewing things and the government having a motion schedule.
5 I want to start moving this case. This case is going nowhere
6 fast on my calendar.

7 So defense motions by February 25; government's
8 response March 25th; defense reply April 8. Then we'll have a
9 religious holidays week.

10 Mr. O'Neil, I want to set the next conference for the
11 end of April, beginning of May.

12 MR. RIOPELLE: Your Honor, it's Roland Riopelle for
13 Robert Eagan. I have a firm trial day out of town first two
14 week of may. If I could appear by video, I'm happy to do that.
15 I don't want to hold the Court up, but I know your Honor is
16 very committed to in-person. I just want to tell you I'm going
17 to be out of town.

18 THE COURT: If it turns out that you're a couple of
19 thousand of miles away, we'll have to take you by video Mr
20 Riopelle. I'm going to be a couple of thousands of miles away
21 the 13th of May. It will be before that, and I will not be on
22 trial. Mr. Riopelle, what time zone are you going to be in?

23 MR. RIOPELLE: I'm going to be in Salt Lake City, your
24 Honor.

25 THE COURT: In mountain time, so you're two hours

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1 behind us. I don't have any idea what Salt Lake City trial day
2 is.

3 MR. RIOPELLE: He tells us that he goes to about five.

4 THE COURT: Which is seven here. What time does he
5 start?

6 MR. RIOPELLE: He wants us in the courtroom beginning
7 at 8:30 in the morning which is 10:30 New York time.

8 THE COURT: Does he allow you to eat?

9 MR. RIOPELLE: I hope. I'm told that he does, your
10 Honor, and that lunch is at about noon.

11 THE COURT: Which is two o'clock. So let's say 2:15.

12 MR. RIOPELLE: He's very accommodating, your Honor.
13 He'll work with you.

14 THE COURT: Good. I'm delighted.

15 MR. MAZUREK: Your Honor, This is Henry Mazurek. I
16 have a request for indulgence from your Honor on the date of
17 February 25th. We have another set of humungous motions due on
18 that same day. Would you extend --

19 THE COURT: Extend it to when?

20 MR. MAZUREK: Just to March 4th.

21 THE COURT: Okay.

22 MR. MORAK: Your Honor, This is Glenn Morak for Scott
23 Roche. Is it possible to do May 3 instead of May 4th, because
24 I may be going out of town on May 4th?

25 THE COURT: May 3rd, 2:15, 12:15 mountain. Time

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1 excluded to May 3rd in the interest of justice. The
2 defendants' interest in speedy trial being outweighed for the
3 need of their lawyers to review what is apparently a very
4 difficult wiretap to review with over 6, 000 discrete files and
5 no line sheets and also to accommodate the making of motions.

6 If we get to the end of February, beginning of March,
7 and nobody's making any motion -- I mean, I don't think that's
8 going to happen, if we get there and nobody is not making any
9 motion, will someone call Mr. O'Neil. Okay.

10 Otherwise, I'll see you next May. I will see you in
11 courtroom 24A one way or another, and we need to move this
12 cause along, folks. I'm hoping that by May I'll have the
13 ability to give you a trial date.

14 We're moving toward that. We're moving toward
15 calendar control in individual judges. I Actually want to
16 thank the executive attorney's office and all defense counsel.
17 You've been remarkably patient. I know this has been hard on
18 you. It's hard on us too. But I have to tell you, we have
19 completed upwards of 80 jury trials in this district, and we
20 are the only federal district in this country that has done
21 anything like that, and it's because we've gone to this
22 centralized schedule.

23 I don't want to be a state court judge anymore. I
24 stopped doing that 23 years ago. I'd like to come back to being
25 a federal judge and have control over my own calendar, and

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1 hopefully that will happen in the first quarter of next year,
2 but we could have not done this without you so thank you.

3 Anything else from the government?

4 MR. SWERGOLD: No. Thank you, your Honor.

5 THE COURT: Okay. From the defense, anybody.

6 Have a wonderful holiday season.

7 (Adjourned)